

Decision 01-06-036 June 14, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Verizon Select Services Inc. (U 5494 C) to Transfer California Customer Base and Withdraw the Provision of Local Bundled Service.

Application 00-12-012  
(Filed December 13, 2000)

**O P I N I O N**

**I. Introduction**

Verizon Select Services, Inc. (VSSI), formerly known as GTE Communications Corporation, <sup>1</sup> filed an application on December 13, 2000, pursuant to General Order (GO) 96-A for Commission authority to withdraw its provision of resold local exchange service and related bundled service offerings in California. VSSI plans to continue providing long distance service in California.

In conjunction with this decision to withdraw the provision of local residential services, VSSI also seeks Commission authority to transfer its entire customer base either to (1) the customers' local carrier of choice or, (2) if no choice is made, to the underlying incumbent local exchange carrier (ILEC), Pacific Bell Telephone Company (Pacific) or Verizon California Inc. (Verizon California). To facilitate customer transfer and facilitate its request for expedited

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<sup>1</sup> VSSI is a corporation organized under the laws of the state of Delaware with its principal place of business at 6665 N. MacArthur Blvd., Irving, Texas.

treatment, VSSI developed a customer notification and transfer plan. VSSI asserts that the plan was intended to provide the greatest opportunity for customer awareness, the informed exercise of customer choice, and a seamless transition with no service interruption to the customers' selected carriers.

VSSI requests that its application be granted on an expedited basis in order to coordinate its efforts in California with similar requests in other jurisdictions. VSSI reports that it began customer notification and transfer in December 2000 in a number of states other than California (consistent with Commission rules in those states), and plans to complete this process as quickly as possible consistent with regulatory requirements.

VSSI was granted a Certificate of Public Convenience and Necessity (CPCN) in California by Decision (D.) 96-02-072, as modified by D.97-11-028, and is authorized to provide local exchange and interexchange services on a facilities-based and resale basis. VSSI provides local exchange service, long distance, and other add-on features<sup>2</sup> in a bundled service offering called OneSource. At the time of filing, the customer base of VSSI was approximately 200,000 business and residential customers statewide. All local exchange service is provided via resale from the underlying incumbent carrier; no facilities-based local exchange service is provided. All local service offerings are provided out of VSSI's current tariffs on file with the Commission; no services are provided via contract.

VSSI seeks to withdraw the provision of bundled local service but to continue to offer long distance service. VSSI does not wish to modify its CPCN

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<sup>2</sup> This bundled service offering includes vertical services (e.g., voice mail, call waiting), intraLATA toll, long distance, wireless, paging, and/or Internet services, where available.

authority, however, as it is considering plans to re-enter the local market in the future utilizing a different platform.

## **II. Position of Applicant**

VSSI bases its request to withdraw from offering local service on technological and competitive changes occurring in the local telecommunications industry. VSSI claims the technological changes underway in the market and the increasing focus on broadband offerings will in all likelihood soon render its current bundled narrowband local service offering less competitive and less attractive than it is today.

To meet the demands of providing quality and competitive service offerings to its customers in this changing environment, Verizon has decided to discontinue the OneSource bundle of services both inside and outside Verizon's incumbent local exchange carrier service territories. Verizon intends to build its own high-speed data networks and to rely on its relationships with other companies to extend broadband service to customers outside its traditional franchise territories.

Notice requirements for transfer of a customer base from one carrier to another were adopted in D.97-06-096, establishing the following minimum requirements:

1. The notice must be in writing;
2. The carrier must provide it to customers no later than 30 days before the proposed transfer;
3. The notice must contain a straightforward description of the upcoming transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free number for questions; and

4. The notice and the carrier's description of service to customers must be included in the advice letter.

VSSI asserts that its notice more than meets these requirements. It provides more than 30 days' notice, and gives customers the opportunity to consider the selection of alternate carriers or, absent any selection after a specified period of time, to default to the ILEC.

To facilitate such default transfers in the event they are required, VSSI states that it has already coordinated with the affected ILECs in California, Verizon California and Pacific, to develop transition plans. VSSI respectfully requests that the Commission direct these carriers to provide local exchange service to these customers subject to their credit requirements. VSSI states that while it will utilize its best efforts not to return to these carriers those customers who are not in good standing, VSSI has no way of knowing all of its customers that may not meet the incumbent's credit requirements. Therefore, VSSI requests that these carriers be directed to accept all these customers, subject to their right to terminate service to these customers, after proper notice, if these customers do not meet their standards for provision of service. Subject to the approval of this petition, Verizon California and Pacific have agreed to accept the transitional customers.

VSSI claims that its plan, once approved by the Commission, also satisfies the requirements of state law. Public Utilities Code Section 2889.5 which prohibits changes in telephone service provider without customer authorization, states in part:

"No telephone corporation ... shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service ... of a telephone

subscriber until all of the following steps have been completed.”

The Commission has reviewed the applicability of Public Utilities Code Section 2889.5 to customer base transfers, and has determined that “Section 2889.5 was not specifically written nor intended to impose its rigorous requirement on customer base transfers.” (D.97-12-119, 1997 Cal. PUC LEXIS 1146 \*2.) Instead, in D.97-06-096, the Commission established the notice requirements discussed above to be applies in the case of customer base transfers such as that involved here. VSSI requests that the Commission reiterate its prior ruling that customer base transfers are not subject to Section 2889.5.

VSSI’s request to transfer its customer base applies only to its local bundled service offering. VSSI intends to continue offering intraLATA and long distance services, and therefore, customers will not be changed with respect to such services unless they specifically request and authorize such change.

### **III. Responses from Customers**

Although no other party besides the applicant filed a formal appearance in the proceeding, a large volume of letters and electronic mail have been received by the Commission's Public Advisor's Office from customers of VSSI, objecting to granting the application. Public participation hearings were also held on March 22, 2001 in Los Angeles and San Bernardino where VSSI customers appeared to speak in opposition to granting the application.

A recurring theme in customers’ comments is that Verizon should not be permitted to cancel the OneSource service arrangements unilaterally but should be required to honor the company's contractual obligation to offer the existing package of bundled service. Customers believe that consumers should not be

forced to move from carrier to carrier just because serving existing customers no longer fits into VSSI's current business plans.

Customers also object to the manner in which they were notified of the withdrawal of service. Many customers found the notices to be misleading because they left the impression that customers were required to switch to another carrier on or before March 19, 2001. To the extent there was any reference to the requirement for advance approval from the Commission, such reference was buried toward the end of the letter. Certain customers report that they were told in error by company representatives that the approval had already been obtained, and they would have their service cut off if they did not switch to another carrier by March 19, 2001. At least one customer characterized VSSI's actions as "a kind of slamming process designed to push customers into higher-priced services months prior to any need to do so, or never, if the Commission rejects the Application." (RT 9.) Another customer indicated that he had requested to have his VSSI local service continued at least up until March 19, the deadline announced by the company to cut off service. Instead, this customer reports that he was switched prematurely and was denied the opportunity to be reinstated into the OneSource service after the switch had occurred.

#### **IV. Reply of VSSI**

On April 2, 2001, VSSI filed a response to the customers' comments made at the public participation hearing (PPH), addressing both general objections to the application and responding to individual service-related complaints raised

by certain customers at the PPH.<sup>3</sup> VSSI provided a report on steps it has taken to address the individual service-related complaints since the PPH. VSSI also provided a general discussion explaining in more detail the measures it has taken to provide additional internal company support systems to assist customers in the transition process. VSSI claims that it has devoted significant resources to provide customers with the maximum opportunity to select a carrier of their choice, and to ensure as smooth a customer transition as possible. VSSI believes that the vast majority of customers in California and nationwide have been transferred smoothly and without incident.

VSSI states complaint calls to VSSI call centers received prior to the third notification letter were generally minimal and of a routine nature. VSSI states that it was after the mailing of the third-customer notification letter that a number of complaints about the timing of the withdrawal were brought to VSSI's attention by Commission staff. VSSI states that the third notification letter sent to its customers, unlike the first two letters, was mailed without internal regulatory or legal review. Had it received such review, VSSI states that the third notification letter would not have been sent. VSSI concedes that, in retrospect, the third letter was confusing and conveyed the impression that service would be transferred independent of Commission approval. VSSI expresses regret for this result.

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<sup>3</sup> VSSI attached a motion for leave to file its comments relating to customer-specific service-related complaints under seal. In the interests of protecting customer privacy, Public Utilities Code Section 2891 requires customer consent prior to the release of any customer-specific information including services provided, demographic information, etc. VSSI's motion to file the customer-specific information under seal is granted.

Prior to the issuance of the third letter, VSSI records show that 65% of its customers had already selected another service provider. As of April 2, 2001, an additional 55% (or roughly 35,000) of remaining customers have selected another carrier. VSSI reports that virtually all customers outside of California have already switched to other carriers. VSSI argues that it would be extremely costly and unreasonable to require VSSI to maintain adequate staff resources to continue to provision service to a customer base of 28,000, which is further dwindling. VSSI reiterates its request for prompt approval of its application.

## **V. Discussion**

The application before us raises two major issues. First, assuming VSSI is permitted to withdraw from service, did it exercise proper measures in notifying customers and implementing the transfer of customers to other carriers? Secondly, should VSSI be authorized to withdraw from offering the OneSource bundled service over the vigorous objections of its customers?

### **1. The Customer Notice Process**

We generally agree that the notice requirements of D.97-06-096 apply to proposed customers base transfers, such as this one. We conclude, however, that VSSI's notification process concerning its withdrawal of service in this particular case resulted in customers' being misled concerning their rights to continue receiving service from VSSI. Customers were led to believe that their local service from VSSI would be automatically terminated if they did not switch carriers by March 19, 2001. The series of written notices mailed to customers did not adequately disclose that customers were entitled to continue to receive service from VSSI beyond March 19, 2001 if the Commission had not approved the application by that date.



According to Commission GO 96-A Section XIV, "No public utility of a class specified herein shall, *unless authority has been obtained from the Commission*, either withdraw entirely from public service or withdraw from public service in any portion of the territory served." Thus, VSSI is required to continue to offer local exchange service to existing customers until or unless authorized to discontinue it by this Commission. Customers are entitled to be properly informed about their options in the event that a carrier seeks to exit from the local market. VSSI cannot stop serving customers unilaterally by a self-imposed deadline, but must continue to offer service until the Commission authorizes a deadline for service to be terminated. Customers whose service was terminated under misleading or false pretenses, therefore, should have recourse to be made whole for any excess charges incurred as a result of having their OneSource service terminated prematurely.

Although VSSI acknowledges the third letter in its customer notification series was "confusing," we find that the whole notification process from the beginning failed to provide complete information to customers concerning their options in view of the impending application to withdraw service. We understand the company's eagerness to discontinue OneSource service as soon as possible, but do not condone the methods used to unload its customer base prematurely before the Commission had even given any indication that its application would be approved by March 21, 2001.

The third in the series of letters sent to VSSI customers, in particular, was misleading. The third letter carried the boldface banner headline: "This is your *third and final* notification. You must act now to prevent service interruptions." (Emphasis added.) Yet contrary to its own banner headline in the customer notification letter, VSSI claims in its April 2, 2001 response that a

*fourth* notification was *always* planned for California, and that an additional notice will be sent once Commission approval and a final withdrawal date have been established.

Customers should not have been told that their service would be interrupted if they did not switch service providers by the company-imposed March 19 deadline. The wording of the notification letters (particularly the third one) left a misimpression with customers that they would have to switch immediately even though the Commission had not yet acted on the application. As a result of VSSI's notification process, the original customer base of 200,000 (at the time the application was filed) had already shrunk to only 28,000 customers by April 2, 2001. Without waiting for Commission approval, VSSI's notification campaign prematurely deprived tens of thousands of customers of the benefits and savings of the OneSource bundled service by leaving the impression that their bundled service plan would automatically be terminated by March 19, 2001.

It would not have been improper simply to inform customers that the company was seeking authority from the Commission to withdraw from service, and had proposed March 19, 2001 as the deadline. It was improper, however, for VSSI to unilaterally set March 19 as a mandatory deadline for customers to switch under the threat of having their service involuntarily switched. While the VSSI written notices technically provided disclosure that the withdrawal from service was conditional on Commission approval, the letters also mistakenly left the impression that service would terminate on March 19, 2001, in any event. The letter improperly implied that Commission approval by March 19, 2001 was a foregone conclusion, and failed to advise customers that their service would continue until or unless the Commission granted the application and established a deadline for service withdrawal to occur.

VSSI should have stated more clearly that Commission authorization was required before the company could withdraw service, and that customers would continue to be served until or unless the Commission approved the application, and then only after a sufficient advance notice period to give customers time to find another carrier.

## **2. Restitution to Customers**

This Commission has rules prohibiting the practice of slamming, that is, the switching of customers from one carrier to another without the customer's permission. While the customers in this instance technically consented to being switched, it was under misleading pretenses, only after being warned their service would end by March 19, 2001. We adopt measures as laid out below to correct the previous misleading notifications and to provide restitution to any customers that were harmed by prematurely terminating their OneSource service based on such misleading information.

In its comments on the Draft Decision, VSSI argues that any requirement for restitution should be limited to those customers that switched in response to the third customer notification letter. VSSI objects to paying restitution to customers that switched in response to either the first or second notification letter, arguing that the text of those letters were reviewed and approved by Commission staff before being mailed. We recognize that VSSI met with Commission staff prior to finalizing the language in the first two draft letters, and incorporated certain input provided by staff. Yet, the final crafting of the notification letters that were mailed to customers always remained under the control and responsibility of VSSI, itself.

We conclude that the language in the first two letters, while not as egregious as the third letter, still left misleading impressions with customers.

While making passing reference to the Commission approval requirement, the first two letters unduly left the impression that customers had to switch service providers by March 19, 2001 to avoid service interruptions. VSSI's letters failed to adequately explain the tentative nature of the proposed March 19, 2001 date for the termination of OneSource service. Even assuming Commission approval of the VSSI's request to withdraw OneSource service, there was no certainty that the Commission would necessarily act under the schedule hoped for by VSSI. VSSI had no basis to tell customers that the last day of service "will be" March 19, 2001, even assuming Commission approval of the request to withdraw from service. The letter was also silent on the available rights or options that customers had to respond to the application. In fact, the Commission chose to provide an opportunity for customer input through Public Participation Hearings prior to acting on the application. Those Public Participation Hearings did not even occur until after the March 19 date that was touted by VSSI as the "last day of service."

Moreover, the notification process entailed more than just the form letters that were sent, but also included ongoing telephone communications between customers and service representatives of the company. Independently of what was conveyed in the notification letters, various customers have complained to the Commission about receiving misleading information over the telephone from VSSI service representatives. These complaints predate the third notification letter, and are referenced in written correspondence and in statements made at the Public Participation Hearings. In view of these considerations, we uphold the Draft Decision in applying the restitution period from the start of the notification process.

We agree with VSSI, however, that restitution eligibility should be limited to customers that switched prior to the issuance of the customer notification of Public Participation Hearings in this proceeding. This notice incorporated language prescribed by the ALJ ruling to make it clear that customers would be permitted to provide input before any action by the Commission on the application, and that Commission approval was required before VSSI could withdraw from the provision of service. Since the Public Hearings were not scheduled to occur until after March 19, 2001, it was clear from the notice that OneSource service would not end on March 19. Therefore, since VSSI sent this notification letter on March 5, 2001, we presume that any customers discontinuing OneSource service thereafter did so of their own volition, and were not misled. Accordingly, we shall limit the eligibility period for customers claiming restitution to those that switched prior to the date of the March 5 notice.

### **3. Commission Authorization to Withdraw Local Bundled Service**

We next consider whether VSSI should be authorized to withdraw from offering bundled local service at all, and if so, what date should be set for withdrawal. Various customers have asked the Commission to deny VSSI's application, and simply prohibit the company from withdrawing its OneSource bundled service. Various customers have asked the Commission to compel VSSI to continue offering its OneSource bundled service indefinitely. Customers complain that they were actively solicited by Verizon to change to this plan as recently as the spring of 2000, and then only a few months later were being told the service will terminate. Customers believe that the Commission should order

Verizon to continue offering the service in order to honor the contract that it made with customers.

We sympathize with the frustration voiced by VSSI customers. It is disheartening to find CLECs looking for ways to exit the local service market rather than seeking to expand their customer bases. Over the past several years, we have worked toward developing a regulatory environment to promote the growth of competitive alternatives for consumers. It is unfortunate that carriers are filing applications intended to diminish, rather than increase, the competitive choices available to local customers. Based upon the letters received from customers, it appears that few, if any, alternatives are available to many VSSI customers other than to return to the incumbent provider.

The proposed withdrawal of VSSI from serving its customer base raises the issue of a public utility's continuing obligation to serve and the rights of customers to uninterrupted, reliable, and reasonably priced telephone service. Prior to the opening of local telecommunications markets to competitive entry, the obligation to serve was generally imposed on one monopoly provider of local exchange services within a service territory. The monopoly provider had a continuing obligation to provide service on a nondiscriminatory basis to all customers within its service territory. The monopoly provider did not realistically have the option of discontinuing service to customers in order to seek more profitable opportunities in other lines of business or to limit service only to market segments generating high profits. Customers were dependent upon the monopoly provider for continued local telephone service.

If VSSI were a monopoly provider, there would be no question of its obligation to continue to provide service to its local customers. Yet, in this instance, VSSI is not a monopoly provider, but is a separate carrier competing

with the ILEC and any other CLECs that may be offering service in the same region. As such, we must evaluate VSSI's request to withdraw from service in the context of the rules and framework that have been adopted for competitive carriers.

With initiatives to open the local exchange market to competition beginning in 1995, a new framework had to be developed to accommodate the arrival of multiple local carriers where there had previously only been one monopoly provider. On the one hand, our rules were aimed at promoting market flexibility to encourage new carriers to enter the market and provide greater competitive choices for consumers. On the other hand, we could not guarantee that competitors would in fact enter every local market. Likewise, we could not guarantee that once a CLEC entered a local market that it would never change marketing strategy, or never choose to exit the market.

Commission rules permit greater regulatory flexibility to CLECs in contrast to incumbents in the interests of fostering a competitive market. The nature of a competitive market is that individual carriers may either enter or exit the market over time. At the present time, not every customer in every local service area in California can be assured of having a choice of local carriers. Instead, our rules aim to ensure that customers have access to reliable universal telephone service that would not be jeopardized even where competition does not exist.

In 1995, we opened the "Universal Service" proceeding (R.95-01-020/I.95-01-021) to ensure that universal service goals . . .preserved as we moved from a monopoly environment into a competitive arena for telecommunications services. In D.95-07-050, we identified two principal goals with respect to universal service: (1) that a certain minimum level of telecommunications

services be made available to everyone in the state, and (2) that the rate for such services remain affordable.

Related to the concept of universal service is the concept of "carrier of last resort" (COLR). As we stated in D.96-10-066: "The COLR is a regulatory concept rooted in the idea that by accepting the franchise obligation from the state to serve a particular area, the public utility is obligated to serve all the customers in the service area who request service. The COLR concept is important to universal service policy because it ensures that customers receive service."

Under the competitive framework developed in our Universal Service Rules adopted in D.96-10-066, we designated the incumbent local exchange carriers as the COLR in their respective territories. Under Universal Service Rules, only a COLR is eligible to draw from the designated Universal Service subsidy funds to offset the cost of serving customers in high cost areas. In contrast to the COLR, a CLEC is not bound by the same obligation to serve a given local market, but is free to tailor its marketing only to serve only certain segments, as long as there is no unfair discrimination. The market entry or exit of individual CLECs does not jeopardize the Commission's Universal Service goals as long as the COLR meets its obligation to serve customers, including those that may have been previously served by a CLEC that exited the market.

In this instance, the COLR in the service territories served by VSSI is the incumbent carrier. Even with the departure of VSSI from the local exchange market, its customers will continue to have uninterrupted service through their assured transfer to the COLR, assuming no other CLEC is available to offer better alternative service. As we have stated above, VSSI can only withdraw after providing customers proper advance notice to provide time to make



arrangements with another carrier. Even though the rates and terms that the COLR (i.e., the ILEC) currently offers for a bundle of services may be higher than the OneSource bundled service offered by VSSI, the ILEC service still remains subject to price-cap and service quality regulations of the Commission. Thus, customers that are switched from VSSI to an ILEC still remain protected against unreasonably high rate increases for their telephone service as provided for under ILEC regulatory rules.

Until VSSI decided to file an application seeking to withdraw from local service, customers in the VSSI service territory benefited by having VSSI's OneSource bundled service as a competitive alternative to ILEC offerings. The ideal scenario would be for VSSI to continue to offer such service voluntarily based upon the competitive market incentives in place. Yet, just as our rules currently do not compel CLECs to enter into local exchange markets that they choose not to serve, neither can we obligate a CLEC, such as VSSI, to continue indefinitely to serve a market sector that it does not wish to serve. Likewise, our rules do not prohibit CLECs from changing the terms of existing tariffs, but require them to provide customers with 30 days' advance notice before changing the terms of tariff offerings. The OneSource service is offered by tariff, not by contract. Therefore, VSSI does not breach any contracts by withdrawing its OneSource tariff offering.

It would be improper to force VSSI to continue to serve the local market involuntarily as we have not required other CLECs to provide local service involuntarily where they are not a COLR. Such action would be unlawful because we are prohibited under the Telecommunication Act of 1996 from discriminating arbitrarily or unfairly in administering the rules governing to local carriers. (Sec. 253(b) 47 U.S.C.)

## **VI. Conclusion**

While we regret VSSI's change in business plan to withdraw from offering bundled service to its residential and business customers, we recognize that our rules for competitive carriers provide the flexibility for it to do so, subject to proper measures to notify customers in advance and to assist them in transferring smoothly to another carrier.

We will, therefore, grant the application of VSSI to withdraw from providing bundled local service subject to the terms and conditions outlined below. We generally approve of the plans that have been made for the ILECs to accept all transferred customers subject to the ILECs' existing rights of termination after proper notice. VSSI's withdrawal may become effective only after VSSI provides customers proper notice of the Commission-authorized date for service to terminate and the information necessary to permit them to make the best informed choice concerning alternative service providers. Customers shall be given a minimum of 30 days from the date of notification to terminate their OneSource service and to find another carrier. VSSI shall be authorized to withdraw from the provision of bundled local service 30 days after it has mailed notification to customers of the Commission's approval granted herein for its service to terminate.

We will require VSSI to send a notice within 10 days of this order to all of its current customers. VSSI shall seek approval of the Commission's Public Advisor's office on the appropriate language for the notice. VSSI shall send confirmation to the assigned ALJ certifying that the notices have properly been sent as directed. On the condition that VSSI has complied with proper notice requirements and the other terms as set forth in this decision, VSSI will be authorized to withdraw from offering local service.

We will also require VSSI to take appropriate steps to make restitution to eligible customers that prematurely switched to a more expensive or inferior service alternative based on the mistaken belief that their service would be cut off by March 19, 2001. We will require VSSI to contact those former customers that switched to another carrier after receiving notices directing them to switch by March 19, 2001. VSSI shall seek concurrence of the Commission's Public Advisor regarding the language to appear in the notice. No later than 10 days following the effective date of this order, VSSI shall mail notification to prior customers informing them that they are entitled to request restitution from VSSI if they terminated their OneSource service prematurely under the impression that they had to do so by March 19, 2001 in response to VSSI's prior notices. Former customers shall be given 20 days following receipt of the notice in which to reply to VSSI. We will require VSSI to reimburse eligible former customers that respond to the notice, compensating them for the difference between what they would have paid under the OneSource bundled service versus what they had to pay for replacement service from an alternative provider. The reimbursement shall cover the period beginning with the date the customer terminated VSSI service through the date that VSSI service is authorized to end pursuant to this decision. VSSI shall compensate responding eligible customers at rates based on a comparison of the equivalent tariffed offerings of the underlying carriers with the various OneSource bundle rates and local content. VSSI shall file a compliance report with the Commission no later than June 29, 2001, confirming its compliance with the customer restitution as prescribed in this order.<sup>4</sup>

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<sup>4</sup> For customers to be eligible for reimbursement, they must be in good standing and must have switched service prior to March 5, 2001. Any customer who was

*Footnote continued on next page*

While we grant VSSI's application to withdraw from service subject to the terms of this order, we take such action reluctantly. We are not pleased that carriers such as VSSI seek to withdraw from the local market, and we regret the loss in competitive options that customers will experience as a result. We recognize, however, that competitors cannot be forced to enter or continue indefinitely to serve in markets where they do not find it economically feasible to do so. Rather, the longer term solution is to continue to develop policies that provide economic incentives for competition to thrive so that carriers will seek to enter local markets and continue to serve those markets, particularly in residential and small business communities. In any event, VSSI customers will still be assured of continued service provisioned through the COLR if no other competitive options are available.

While VSSI has requested authority to withdraw from providing OneSource local bundled service, VSSI seeks to retain its previously granted CPCN local authority so that it may reenter the local market at a future date utilizing a different platform.

In its comments to the Draft Decision, VSSI further explained that it does not intend to abandon local service entirely, but will continue to serve a limited number of customers with local data and private line service. These latter customers' service would not be affected by the withdrawal of the OneSource bundle and related services.

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disconnected for nonpayment is not eligible for reimbursement. Likewise, those customers who purchased only long distance or ancillary services, but no local services from VSSI, are not eligible for a reimbursement.

We shall permit VSSI to retain its existing local exchange CPCN authority after OneSource service is discontinued. In this manner, VSSI will be able to continue offering local service to these customers in an uninterrupted fashion and will be free to resume local service to other customers at a later date within the scope of its CPCN authority.

We will also permit VSSI to continue offer long distance service as it has requested. Customers should not be subjected to any further forced service changes that might otherwise result from revocation of VSSI's long distance authority.

## **VII. Comments on Draft Decision**

The draft decision of the ALJ Thomas Pulsifer in this matter was mailed to the parties in accordance with Public Utilities Code Section 311(g)(1) and Rule 77.7 of the Rules and Practice and Procedure. Comments were filed by Sprint PCS on May 29, 2001. We have taken the comments into account, as appropriate, in finalizing this order.

## **Findings of Fact**

1. VSSI was certificated to provide competitive local exchange service in 1996 under its prior business name of GTE Communications.
2. VSSI currently offers local exchange, long distance, and other add-on features in a bundled service offering called "OneSource."
3. At the time this application was filed, VSSI provided OneSource service to approximately 200,000 business and residential customers statewide.
4. VSSI seeks to withdraw from the provision of local service, but to continue offering long distance service and to retain the option to reenter the local exchange market in the future utilizing a different platform.

5. VSSI implemented a customer notification plan directing customers to switch to another local carrier by March 19, 2001 to avoid service interruptions even though VSSI had not yet been authorized by the Commission to discontinue its OneSource service.

6. Through letters to the Commission and in Public Participation Hearings, a number of customers of VSSI expressed strong opposition to the application noting that any available service alternatives were more costly or less convenient compared with their OneSource bundled service.

7. Customers also complained that they were led to believe by VSSI as to the that they had to terminate their OneSource service by March 19, 2001 or face telephone service interruption.

### **Conclusions of Law**

1. Under GO 96-A, Commission approval is required before a carrier may withdraw from the provision of public utility service.

2. Although public participation hearings were held, no evidentiary hearings are necessary in order to resolve this application.

3. The customer notice requirements of D.97-06-096 apply to customer base transfers such as this one.

4. VSSI should be held accountable for failing to clearly inform customers regarding their rights to continue OneSource service until or unless Commission approval to withdraw was granted.

5. VSSI should be required to make financial restitution to customers that were prematurely switched from VSSI to another carrier under misleading pretenses, as directed in the order below.

6. VSSI should be granted authority to discontinue offering the OneSource bundled service only after all customers have been properly notified concerning

the Commission authorized date for service to terminate and provided necessary information concerning alternative service options that are available.

7. VSSI's CPCN authority should remain in effect following termination of its last customer under the OneSource bundled service plan to enable VSSI to offer new local exchange services at a later date within the scope of its existing CPCN authority and to assure that existing VSSI customers local data and private line service continues uninterrupted.

8. VSSI is subject to the rules for market entry and exit governing CLECs and is not subject to the rules governing COLR.

9. The COLR regulatory concept is rooted in the idea that by accepting the franchise obligation from the state to serve a particular area, the COLR is obligated to serve all the customers in the service area who request service.

10. The COLR concept is important to universal service policy because it ensures that customers receive service.

11. Although the withdrawal of VSSI from providing local service may result in customers losing certain convenience and cost savings features available through OneSource service, the VSSI withdrawal does not jeopardize customers' uninterrupted access to reliable telephone service at reasonable rates.

## **O R D E R**

### **IT IS ORDERED** that:

1. The application of Verizon Select Services, Inc. (VSSI) for authority to transfer its California customer base and to withdraw from the provision of local bundled service is hereby granted subject to the terms and conditions outlined below.

2. Pacific Bell Telephone Company (Pacific) and Verizon California Inc. (Verizon California) are directed to accept all customers transferred to them from VSSI, subject to their rights to terminate such customers after proper notice if prescribed standards of service provision are not met.

3. VSSI is directed to prepare and mail within 10 days of this decision a notice to its current California customers advising them that the Commission has authorized VSSI to withdraw from providing bundled local service effective 30 days following the notice to customers. VSSI shall seek the approval of the Commission's Public Advisor regarding the text to appear in the notice before mailing it.

4. VSSI is directed to prepare and mail within 10 days of this decision a notice to its former customers that switched in response to one of the customer notices directing customers to switch by March 19, 2001.

5. For purposes of compliance with this ordering paragraph, former customers eligible for restitution shall be defined as those customers that switched to another carrier prior to March 5, 2001. Any customer who was disconnected for nonpayment is not eligible for reimbursement. Likewise, those customers who purchased only long distance or ancillary services, but no local services from VSSI, are not eligible for a reimbursement.

6. VSSI shall inform former customers that they are entitled to restitution if they respond to the VSSI notice, indicating that they were misled concerning the deadline to switch service providers to prevent service interruptions. Customers shall be given 20 days in which to respond to the notice. VSSI shall seek the approval of the Commission's Public Advisor regarding the text to appear in the notice.



7. VSSI shall promptly reimburse the former customers who respond to the above-referenced notice, compensating them for the difference between the various bundled rates under the OneSource bundled service compared with the equivalent tariffed offering of the underlying carrier's alternative service beginning with the date their OneSource service was discontinued until the date that VSSI local bundled service is authorized to terminate pursuant to this order.

8. VSSI shall file a compliance report with the Commission by June 29, 2001 indicating the number of customers that have responded to its letter for reimbursement and confirming the steps it has taken to issue appropriate reimbursements to customers in compliance with the terms of this order.

9. A final order in this docket will issue following receipt and approval of the above-referenced compliance report.

10. This docket shall be left open for receipt and disposition of VSSI's compliance report.

11. VSSI's existing CPCN local exchange authority shall remain in effect following termination of its OneSource bundled service offering.

12. The motion to file customer-specific information under seal is granted.
13. A copy of this order shall be served on Pacific and Verizon California.

This order is effective today.

Dated June 14, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
GEOFFREY F. BROWN  
Commissioners

Commissioner Carl Wood, being necessarily  
absent, did not participate.

I will file a partial dissent.

/s/ HENRY M. DUQUE  
Commissioner

**Commissioner Henry M. Duque, dissenting:**

This draft decision introduces uncertainty in the Commission's process and would undermine the meaning and credibility of staff review. Illusive regulatory standards such as those applied in this decision confuse the staff, undermine carriers' confidence in acting on staff's direction, and ultimately will be costly.

Frankly, I am at a loss to find what purpose the restitution ordered in this decision will serve. Is it intended to deter others from doing the same, which in this case is following staff direction and consultation in issuing consumer notices? Or is it intended to make customers whole because they were misled?

VSSI was ordered to follow a notification procedure to ensure that customers are not stranded without a service when it receives Commission approval to terminate certain of its services. VSSI sent three notices to affected customers. Three divisions of the Commission – the Telecommunications Division, the Consumers Services Division and the Public Advisor - reviewed these draft letters. Two divisions provided recommendations, which VSSI incorporated. It then submitted the revised draft letter to Telecommunications Division again for review and received a go-ahead. It was after all this consultation that VSSI issued the notices to its customers. The majority (65% or about 130,000) of customers switched service from VSSI to another carrier following these two notices.

VSSI sent a third notice to its customers that carried a strong message about the deadline to switch. The staff did not review this third notice. While I agree that VSSI's third letter is not strictly in compliance with the Commission's process, ordering restitution to the customers that switched service following a Commission reviewed and approved notice is capricious, unfair and outright wrong. It sends the wrong message that we can on a whim sanction carriers whether they are acting on our orders or not.

Even if, for argument sake, we concede VSSI's third letter misled roughly 70,000 customers and that restitution was proper, it makes no sense that 130,000 customers who changed service earlier and were not misled, should receive restitution. Restitution in this sense does not serve the purpose of compensating a harm done. It is a collateral penalty. But sanction, without finding a violation or a grievance, is unnecessary and plain wrong. We must avoid it.

I have serious concerns about this aspect of the proposed decision because it establishes an unenforceable, ever-shifting standard that makes our process unreliable. An eager compliance with Commission rule should elicit praise rather than sanctions. After all,

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the net result of VSSI's eager compliance is not harmful to consumers. If anything, our goal in this type of circumstance ought to focus on ensuring service continuity. A clear set of guidelines to the regulated industry is important and will help us achieve that goal. Equally important is to instill confidence in the authority that we delegate to the staff to act on Commission behalf following those guidelines. The Commission should support and uphold staff's review and approval of utility's requests as long as staff is acting based on Commission policy or standards. That is what happened in this case. We cannot deny that the staff was acting on our behalf when they reviewed and essentially approved those letters. To state that the Commission can accord no weight to that delegated authority casts a shadow of doubt on staff's credibility.

For these reasons, I must dissent in part.

**/s/ HENRY M. DUQUE**

Henry M. Duque

Commissioner

June 14, 2001

San Francisco, California